

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PAUL RECKTENWALD,

Petitioner,

vs.

DWIGHT NEVEN, *et al.*,

Respondents.

Case No. 3:15-cv-00187-RCJ-VPC

**ORDER**

Before the court is petitioner's second motion for appointment of counsel, filed on June 26, 2015 (ECF #14). Respondents opposed (ECF #18), and petitioner replied (ECF #21).

On June 1, 2015, this court denied petitioner's motion for reconsideration of the denial of his first motion for the appointment of counsel (ECF #13). The same day that petitioner filed his second motion for appointment of counsel he also filed a notice of appeal to the Ninth Circuit Court of Appeals and a motion for a certificate of appealability from this court—both regarding this court's denial of reconsideration as to the first motion for counsel (ECF #s 15 and 16, respectively).

The court turns to the notice of appeal first because, generally, the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case involved in the appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (*per curiam*). However, when a notice of appeal “is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the

1 mandate has issued on the appeal does not apply.” *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th  
2 Cir.2007) (citation omitted). Thus, where the deficiency in a notice of appeal “is clear to the district  
3 court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not  
4 been deprived of jurisdiction.” *Ruby v. Secretary of the Navy*, 365 F.2d 385, 389 (9th Cir.1966). In  
5 short, “[f]iling an appeal from an unappealable decision does not divest the district court of  
6 jurisdiction.” *U.S. v. Hickey*, 580 F.3d 922, 928 (9th Cir.2009).

7 Here, it is clear that this court’s order denying petitioner’s motion for reconsideration of the  
8 denial of the motion for counsel is not an appealable order, and thus, petitioner’s notice of appeal is  
9 defective. *See Weygandt v. Look*, 718 F.2d 952, 953–54 (1983) (denial of counsel in a habeas corpus  
10 proceeding is not an appealable interlocutory order). Because petitioner’s notice of appeal is clearly  
11 defective, this court retains jurisdiction to consider his petition on the merits. And because the order  
12 denying reconsideration is not an appealable order, petitioner’s motion for a certificate of appealability  
13 must also be denied.

14 Next before the court is petitioner’s second motion for appointment of counsel (ECF #14). It  
15 is a form motion that presents no further argument or allegations whatsoever with respect to why  
16 counsel is warranted in this case. Accordingly, petitioner’s second motion for appointment of counsel  
17 is denied.

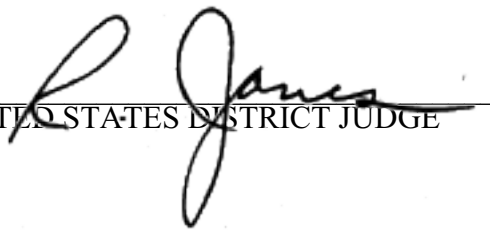
18 Finally, petitioner has filed a motion for copies (ECF #20). He requests copies of his replies in  
19 support of his motion for certificate of appealability and his second motion for counsel. He also  
20 requests three copies of his federal petition together with all attachments in order to submit such copies  
21 to the Ninth Circuit in connection with his appeal of the denial of motion for reconsideration. The court  
22 notes that the two replies that plaintiff references are each comprised of a single statement that  
23 petitioner opposes each and every point set forth by respondents (*see* ECF #s 21, 22). Further, as  
24 described above, the notice of appeal is defective. Therefore, petitioner’s motion for copies is denied.

25 **IT IS THEREFORE ORDERED** that petitioner’s second motion for appointment of counsel  
26 (ECF #14) is **DENIED** as set forth in this order.

1           **IT IS FURTHER ORDERED** that petitioner's motion for a certificate of appealability (ECF  
2 #16) is **DENIED**.

3           **IT IS FURTHER ORDERED** that petitioner's motion for copies (ECF #20) is **DENIED**.

4  
5 Dated this 27th day of July, 2015.

6  
7   
UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28